

## § 10.31

agent, or enrolled actuary may in matters related to the Internal Revenue Service, employ or accept employment or assistance as an associate, correspondent, or subagent from, or share fees with, any person or entity who, to the knowledge of the practitioner, obtains clients or otherwise practices in a manner forbidden under this section: *Provided*, That a practitioner does not, directly or indirectly, act or hold himself out as an Internal Revenue Service practitioner in connection with that relationship. Nothing herein shall prohibit an attorney, certified public accountant, or enrolled agent from practice before the Internal Revenue Service in a capacity other than that described above.

[44 FR 4943, Jan. 24, 1979, as amended at 57 FR 41095, Sept. 9, 1992]

### § 10.31 Negotiation of taxpayer refund checks.

No attorney, certified public accountant, enrolled agent, or enrolled actuary who is an income tax return preparer shall endorse or otherwise negotiate any check made in respect of income taxes which is issued to a taxpayer other than the attorney, certified public accountant or enrolled agent.

[42 FR 38353, July 28, 1977, as amended at 57 FR 41095, Sept. 9, 1992]

### § 10.32 Practice of law.

Nothing in the regulations in this part shall be construed as authorizing persons not members of the bar to practice law.

[31 FR 10773, Aug. 13, 1966. Redesignated at 42 FR 38353, July 28, 1977]

### § 10.33 Tax shelter opinions.

(a) *Tax shelter opinions and offering materials.* A practitioner who provides a tax shelter opinion analyzing the Federal tax effects of a tax shelter investment shall comply with each of the following requirements:

(1) *Factual matters.* (i) The practitioner must make inquiry as to all relevant facts, be satisfied that the material facts are accurately and completely described in the offering materials, and assure that any representa-

## 31 CFR Subtitle A (7-1-99 Edition)

tions as to future activities are clearly identified, reasonable and complete.

(ii) A practitioner may not accept as true asserted facts pertaining to the tax shelter which he/she should not, based on his/her background and knowledge, reasonably believe to be true. However, a practitioner need not conduct an audit or independent verification of the asserted facts, or assume that a client's statement of the facts cannot be relied upon, unless he/she has reason to believe that any relevant facts asserted to him/her are untrue.

(iii) If the fair market value of property or the expected financial performance of an investment is relevant to the tax shelter, a practitioner may not accept an appraisal or financial projection as support for the matters claimed therein unless:

(A) The appraisal or financial projection makes sense on its face;

(B) The practitioner reasonably believes that the person making the appraisal or financial projection is competent to do so and is not of dubious reputation; and

(C) The appraisal is based on the definition of fair market value prescribed under the relevant Federal tax provisions.

(iv) If the fair market value of purchased property is to be established by reference to its stated purchase price, the practitioner must examine the terms and conditions upon which the property was (or is to be) purchased to determine whether the stated purchase price reasonably may be considered to be its fair market value.

(2) *Relate law to facts.* The practitioner must relate the law to the actual facts and, when addressing issues based on future activities, clearly identify what facts are assumed.

(3) *Identification of material issues.* The practitioner must ascertain that all material Federal tax issues have been considered, and that all of those issues which involve the reasonable possibility of a challenge by the Internal Revenue Service have been fully and fairly addressed in the offering materials.

(4) *Opinion on each material issue.* Where possible, the practitioner must provide an opinion whether it is more